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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/393,473 09/10/99 COHEN

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021003
BAKER & BOTTS
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NEW YORK NY 10112

MMC2/0208

EXAMINER

HSIEH, S

ART UNIT

PAPER NUMBER

2837

DATE MAILED:

02/08/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/393.473

Applicant(s)

Cohen

Examiner

Shih-yung Hsieh

Group Art Unit

2837

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 12/26/2000 and interview on 1/18/2001

☒ This action is **FINAL**.

- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 13-14 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 13-14 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☒ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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1. The abstract of the disclosure is objected to because the word "said" should not be used in the abstract. Correction is required. See MPEP § 608.01(b).

2. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kralik et al. in view of Isackson (5,659,143).

Kralik et al. disclose a maraca as stated in the office action of 7/19/2000. The difference between Kralik et al's maraca and claims 13 and 14 is that the claims recite using the maraca as an ornament for a key chain, and a bore is formed in the distal end of the handle of the maraca.

Isackson teaches using the maraca as an ornament for a key chain, and a bore is formed in the distal end of the handle of the maraca for receiving a key chain (col. 3, last line, and col. 4, lines 1-4). It would have been obvious to a person having ordinary skill in the art to modify Kralik et al's ornament as taught by Isackson to include the maraca as an ornament for a key chain, and a bore is formed in the distal end of the handle of the maraca for the purpose of receiving a key chain.

3. Applicant's arguments filed 12/26/2000 and the demonstration of the invention during an interview on 1/18/2001 have been fully considered but they are not persuasive.

The applicant argued that "Neither reference suggests using a miniature maraca as a key ornament" and "None of the references suggest that the breakage problem can be addressed by changing the handle to flexible material". The examiner disagrees. First, Isackson does suggest


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using a shaker, a form of maraca, as key chain ornament. Further, a key chain ornament is obviously miniature ornament. Second, Zadek does suggest a flexible handle which means bendable. The teaching is there for solving breakage problems. Therefore, the rejection stands.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for response to this final action is set to expire THREE MONTHS from the date of this action. In the event a first response is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication should be directed to (David) S.Y. Hsieh at telephone number (703) 308-1031.


Shih-yung Hsieh
Patent Examiner
Art Unit 2837